FILED ON: 1/14/2009

SENATE

. No. 1805

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Establish a Foreclosure Mediation Program .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	Second Middlesex and Norfolk
Elizabeth A. Malia	11th Suffolk
Anthony D. Galluccio	Middlesex, Suffolk and Essex
James B. Eldridge	Middlesex and Worcester
Bruce E. Tarr	First Essex and Middlesex
Susan C. Fargo	Third Middlesex
Richard J. Ross	9th Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO ESTABLISH A FORECLOSURE MEDIATION PROGRAM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 244 of the General Laws as appearing in the 2006 official edition, are
- 2 hereby amended by inserting after section 35A the following section:-
- 3 Section 35B. (a) As used in this section, the following terms shall have the following meanings:
- 4 (1) "Mortgagor" means the owner-occupant of residential real property consisting of a dwelling
- 5 house with accommodations for 4 or less separate households located in the commonwealth who
- 6 is also the borrower under a mortgage encumbering such residential real property, which is the
- 7 primary residence of such owner-occupant;
- 8 (2) "Residential real property" means a one-to-four family dwelling occupied as a residence by a
- 9 mortgagor;
- 10 (3) "Mortgagee" means the original lender or servicer under a mortgage, or its successors or
- assigns, who is the holder of any mortgage on residential real property securing a loan made
- primarily for personal, family or household purposes that is the subject of a foreclosure action;

- 13 (b) Any mortgagor of residential real property located in the commonwealth consisting of a
 14 dwelling house with accommodations for 4 or less separate households and occupied in whole or
 15 in part by the mortgagor, shall have the option to enter into mediation proceedings with the
 16 mortgagee if the mortgagor defaults on a required payment as provided in such a residential
 17 mortgage or note secured by such residential real property. The option to enter into a mediation
 18 program prior to foreclosure proceedings shall be granted once during any 5 year period.
- 19 (c) A Foreclosure Mediation Program

22

23

24

25

26

- 20 (1) The attorney general shall administer a Foreclosure Mediation Program and shall establish 21 policies and procedures to implement this section.
 - (2) The attorney general, subject to appropriation, shall ensure that all judicial districts in the commonwealth have access to a foreclosure mediation program, approved or provided by the attorney general. The attorney general, subject to appropriation, shall expand existing mediation services provided by the attorney general or shall expand current approved community mediation programs in the commonwealth to provide mediation services to all judicial districts.
- (3) Subject to appropriation, the attorney general shall create a program to train mediators in the
 Foreclosure Mediation Program in all necessary aspects of foreclosure law.
- 29 (d) Notice Provision and Requests for Mediation
- When a mortgagor defaults on a mortgage payment and the mortgagee notifies the mortgagor of his 90 day right to cure a default of a required payment under Section 35A, the mortgagee shall give notice to the mortgagor of the Foreclosure Mediation Program by attaching to the 90 day

- right to cure a default notice that is served on the mortgagor: (1) A copy of the notice of the availability of foreclosure mediation, in such form as the chief justice for administration and management prescribes, and (2) a foreclosure mediation request form, in such form as the chief
- 36 justice for administration and management prescribes.
- 37 (i) Except as provided in subdivision (ii) of this subsection, a mortgagor may request foreclosure
- mediation by submitting the foreclosure mediation request form to the court not more than 15
- 39 days after receipt of the notice. Upon receipt of the foreclosure mediation request form, the court
- shall notify each party that a foreclosure mediation request form has been submitted by the
- 41 mortgagor.
- 42 (ii) The court may grant a mortgagor permission to submit a foreclosure mediation request form
- and file an appearance in court after the 15 day period established in subdivision (i) of this
- subsection, for good cause shown, except that no foreclosure mediation request form may be
- submitted and no appearance may be filed more than 30 days after receipt of the notice.
- 46 (iii) If the court determines that the notice requirement of this section has not been met, the court
- 47 may, upon its own motion or upon the written motion of the mortgagor, issue an order that no
- 48 judgment may enter for 15 days during which period the mortgagor may submit a foreclosure
- 49 mediation request form to the court.
- 50 (iv) If the court grants the mortgagor permission to submit a foreclosure mediation request form
- with the court after the 15 day period according to this subsection, the 90 day right to cure a
- 52 default period under section 35A shall be extended if necessary.

- (e) Notwithstanding any general or special law to the contrary, no judgment ordering a foreclosure sale shall be entered in any action instituted by the mortgagee to foreclose a mortgage on residential real property unless: (1) Notice to the mortgagor has been given by the mortgagee in accordance with this section and the time for submitting a foreclosure mediation request form has expired and no foreclosure mediation request form has been submitted, or if such notice has not been given, the time for submitting a foreclosure mediation request form pursuant to subsection (d)(1)(iii) of this section has expired and no foreclosure mediation request form has been submitted, or (2) the mediation period set forth in this section has expired or has otherwise terminated, whichever is earlier.
- 62 (f) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by the 63 mortgagor's submission of a foreclosure mediation request form to the court.
 - (g) Foreclosure Mediation Program Requirements

The attorney general, subject to appropriation, shall ensure that each judicial district has the services of a foreclosure mediation program in actions to foreclose mortgages on residential real property. Such foreclosure mediation shall (i) address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, assignment of sale date, restructure, change in terms of payment or other modification of the mortgage debt, and (ii) be conducted by foreclosure mediators who (A) provide mediation services for the attorney general or are mediators for current approved community mediation programs in the commonwealth, (B) are trained in mediation and all relevant aspects of the foreclosure law, as determined by the attorney general according to this section, (C) have knowledge of the community-based resources that are available in the judicial district in which they serve, and (D) have knowledge of the mortgage

assistance programs. Such mediators may refer mortgagors who participate in the foreclosure mediation program to community-based resources and to the mortgage assistance programs, when appropriate.

(h) The Mediation Period

- (1) The mediation period under the foreclosure mediation program established in this section shall commence when the court sends notice to each party that a foreclosure mediation request form has been submitted by a mortgagor to the court, which notice shall be sent not later than 3 business days after the court receives a completed foreclosure mediation request form. The mediation period shall conclude not more than 50 days after receipt of notice from the court, except that the court may, in its discretion, for good cause shown, extend by not more than 10 days, or shorten, the mediation period on its own motion or upon motion of any party.
- (2) The court shall be responsible for referring foreclosure mediation requests to the attorney
 general's Foreclosure Mediation Program, not later than 3 business days after the court receives
 a completed foreclosure mediation form.
 - (3) The first mediation session shall be held not later than 5 business days after the court sends notice to all parties that a foreclosure mediation request form has been submitted to the court. The mortgager and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a

proposed settlement and the mortgagee is available during the mediation session by telephone or electronic means.

- (4) Not later than 5 days after the conclusion of the first mediation session, the mediator shall determine whether the parties will benefit from further mediation. The mediator shall file with the court a report setting forth such determination and mail a copy of such report to each party. If the mediator reports to the court that the parties will not benefit from further mediation, the mediation period shall terminate automatically. If the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period shall continue.
- (5) If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to this section, not more than 5 days after the conclusion of the mediation, but no later than the termination of the mediation period set forth in subsection (1) of this section, the mediator shall file a report with the court describing the proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The filing of the report shall terminate the mediation period automatically. If certain issues have not been resolved pursuant to the mediation, the mediator may refer the mortgagor to any appropriate community-based services that are available in the judicial district, but any such referral shall not result in an extension of the mediation process.
- (6) The attorney general shall establish policies and procedures to implement this section. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session that: (i) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with applicable rules of

- the court; and (ii) foreclosure by entry or action or foreclosure by sale may cause the mortgagor to lose the residential real property to foreclosure.
- (7) In no event shall any determination issued by a mediator under this program form the basis of
 an appeal of any foreclosure judgment.
- 121 (8) At any time during the mediation period, the mediator may refer the mortgagor to the
 122 mortgage assistance programs, except that any such referral shall not prevent a mortgagee from
 123 proceeding to judgment when the conditions specified in this section have been satisfied.
- (i) Nothing in this section shall require a mortgagee to modify a mortgage or change the terms of
 payment of a mortgage.